IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4410 of 2007

SHANTI LAL
V/S
A.C.J. (J.D.) & J.M. NO.3, BHILWARA &ANR

Mr. RAVI BHANSALI, for the appellant / petitioner

Mr. SURESH SRIMALI, for the respondent

Date of Order : 30.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner, perused the impugned order.

The petitioner wants amendment of the written-statement, seeking to incorporate a plea, that during pendency of the suit, there has been a partition in the plaintiff's family, wherein the suit shop has fallen to the share of Omprakash, for whose requirement, this suit has been filed, and this Omprakash has issued public advertisement for selling the shop, which fact is sought to be incorporated by way of amendment. A reply to this application was filed, contending inter-alia that the shop has not fallen to the share of Omprakash, rather the shop belongs to plaintiff herself, and it was denied that Omprakash has given any advertisement in the newspapers, and that Omprakash is not owner of the property. It was

also pleaded that the shop belongs to the plaintiff, and the plaintiff has never partitioned the shop. In that view of the matter, the plaintiff is not bound by any partition, that might have even if done by any person. It was also pleaded that the defendant is interested in making alterations of the shop, and to sublet it. The learned trial Court has found, that admittedly the suit has been filed for eviction on the ground of necessity of the plaintiff's son Omprakash, for opening an Ayurvedic clinic, and no document has been filed about partition, and simply because some advertisement has been issued in newspaper, in the name of some person as Omprakash, it cannot be said that the property does not belong to the plaintiff, and the property fall to the share of Omprakash. It was found that it is for the plaintiff to prove that the plaintiff has the reasonable and bonafide necessity for her son Omprakash, and the defendant can lead evidence to controvert this stand, and that, the case is going on for the defendant's evidence. With this, it has been held that it is not thought proper to allow the amendment of the written statement.

In my view, the precise controversy involved in the litigation is, as to whether the suit shop is required by the plaintiff for her son Omprakash or not. For that purpose, the plaintiff has already led evidence and the defendant is to controvert and rebut this evidence, and is

to establish that the Omprakash requires this suit shop or not. In that view of the matter, since the petitioner can prove his stand to controvert the plaintiff's stand about the plaintiff's requirement for Omprakash, by any evidence he likes, I do not find any ground to interfere with the impugned order. The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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